IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 354 OF 2000.

Shri Fremiot Fernandes,
r/o Ramakant Apartments,
T-4, St. Inez, Panaji. ... Petitioner.

Versus

1. The State of Goa through its Chief Secretary, Secretariat, Panaji.
2. The Under Secretary (Revenue), Government of Goa, Secretariat, Panaji.
3. Park Avenue Cooperative Housing Society Limited through its Secretary Shri Roland David, r/o Adarsh Colony, Miramar, Panaji. ... Respondents.

Mrs. A.A. Agni and Mrs. N.N. Narvekar, Advocates for the Petitioner.

Mr. S.R. Rivonkar, Government Advocate for the Respondents 1 and 2.

Mr. V.P. Thali, Advocate for the Respondent No. 3.

Coram : N.N. MHATRE AND
P.V. HARDAS, JJ.

Date : 4th March 2004.

ORAL JUDGMENT (PER HARDAS, J.)

This petition challenges the Order of the respondent no. 2, dated 20th July 2000, reverting the plot no. 10 allotted to the petitioner.

2. The facts, as are necessary for the decision of this petition, are set out hereunder:-

The petitioner entered into an agreement for sale, on 31st January 1979, with M/s. Despamont, a duly

registered partnership firm whereby M/s. Despamont had agreed to sell to the petitioner plot no. 171 of the property known as 'Primeiro Cunto de Vodle Xete', admeasuring 500 square metres for a total consideration of Rs. 40,000/-, which was to be paid in instalments as stipulated in the said agreement. The petitioner had paid the instalments as stipulated in the agreement and only an amount of Rs. 2,500/- remained as balance, which was to be paid at the time of execution of the sale deed.

3. By Notification, bearing No. 22/19/82-RD, dated 8th February 1985, land admeasuring 89,277 square metres comprising property bearing chalta nos. 81/6, 96/5, 96/4, 96/3, 96/2, 96/1, 100/2, 100/2(part) and 96/6 at Miramar, Panaji was acquired for Town and Country Planning Department for parks and other creational developments of the area. The plot covered by the agreement of the petitioner was also included in the said Notification. Apart from the petitioner, there were several other persons, who had purchased plots from the land covered by the Notification. The petitioner and the similarly circumstanced persons represented to the Government for dropping the acquisition proceedings and in the alternative requested the Government to allot alternate plots. It appears that in a Writ Petition filed by some persons, an undertaking was given to this

Court that the Collector instead of awarding monetary compensation would grant alternate plots to the affected persons. Accordingly, an Order, dated 19th November 1997, was issued by the respondent no. 2, allotting plots of land to the petitioner and others through the respondent no. 3 Society, upon the terms and conditions set out in the said Order. The respondent no. 3 Society was formed and was duly registered under the Co-operative Societies Act.

4. The Society was to obtain affidavits from its members that they would not claim compensation in respect of the acquisition of land. The other condition, as specified by the Order, dated 19th November 1997, was that persons who were affected by the acquisition would alone be allotted plots by the Society.

5. The petitioner was allotted plot no. 10 and received a letter, dated 2nd June 1998, from the respondent no. 3 Society as 'first reminder' requesting the petitioner to inform the Society about the willingness of the petitioner to take possession of the plot by paying the occupancy price. The petitioner was required to convey his acceptance within 20 days of the receipt of the letter. At that time the petitioner was not aware of the conditions of the Order, dated 19th

November 1997. However, the petitioner made it clear in his reply that he desired to take possession of plot no. 10 allotted to him. The petitioner was required to pay Rs. 5,00,544/- as occupancy price for the possession of plot no. 10, admeasuring 396 square metres.

6. On 31st May 2000, the petitioner received a letter from the respondent no. 3 Society annexing a copy of the show cause notice received from the Government as to why plot no. 10, allotted to the petitioner, should not revert to the Government, in view of the failure of the petitioner to deposit the occupancy price. The petitioner, by his letter, dated 2nd June 2000, requested the Managing Committee to reply to the show cause notice and request that the petitioner be granted time upto 16th June 2000 to deposit the occupancy price of plot no. 10. Accordingly, the petitioner went to the office of the Secretary of the respondent no. 3 Society on 16th June 2000, for depositing the occupancy price. However, the petitioner was informed by the Secretary of the respondent no. 3 Society that he did not receive any reply from the Government as to whether the necessary extension had been granted by the Government for payment of the occupancy price. In this circumstance, the Secretary of the respondent no. 3 Society did not accept the occupancy price offered by the petitioner. In the

meantime, the impugned Order, dated 20th July 2000, came to be passed. In the impugned Order a reference is made to the letter, dated 10th June 2000, for extension of time upto 16th June 2000 for payment of the occupancy price. The impugned Order does not state that the Secretary was communicated that the time for payment of the occupancy price had been extended upto 16th June 2000. All that the impugned Order recites is that the extended time had expired, no reply had been received from the Society and plot nos. 10 and 11 stood reverted to the Government. The Society in its reply in paragraph 29 has admitted that an extension was sought upto 16th June 2000 to assist the petitioner and other members to pay the occupancy price. However, no such time limit had been extended by the Government. In other words, the Society was not informed that the Government had extended the time limit upto 16th June 2000.

7. The affidavit of the Under Secretary (Revenue), at paragraph 9, states that no action was taken by him upto 16th June 2000 as per the request of the respondent no. 3 Society. It is further stated in the affidavit that neither the petitioner nor the other persons made any efforts to find out whether the extension had been granted. Apparently the fact that extension was granted upto 16th June 2000 was not

communicated.

8. We have heard the learned counsel appearing for the parties. The fact that the petitioner had gone to the Secretary of the respondent no. 3 Society for payment of the occupancy price, on 16th June 2000, is not controverted. Similarly the fact that payment was not accepted by the Secretary is also not controverted. Undisputedly the Secretary of the respondent no. 3 Society was not informed by the respondent no. 2 that the time for payment of the occupancy price had been extended upto 16th June 2000. In such circumstance, the Secretary of respondent no. 3 Society did not accept the occupancy price tendered by the petitioner. According to us, since the respondents had issued a show cause notice and a request was made by the Secretary for extending the time limit upto 16th June 2000, it was incumbent upon the authorities to have intimated to the Secretary of the respondent no. 3 Society whether his request was acceded to or not. The respondents cannot now contend that no effort was made either by the petitioner or by the Society to find out if the extension had been granted. It was obligatory for the respondents to have communicated the grant of extension to the Secretary of the respondent no. 3 Society. Therefore, the petitioner cannot be faulted for not having paid the occupancy price within the extended

period. The petition, therefore, deserves to be allowed.

9. In the result, therefore, the petition is allowed. The impugned Order, dated 20th July 2000, issued by the Under Secretary (Revenue) to the Government of Goa, reverting the plot no. 10 to the Government is, hereby, quashed and set aside. Rule is made absolute accordingly. The respondents to accept the occupancy price, if paid by the petitioner within 4 weeks from today, failing which, the Government may take further steps in accordance with law. In the circumstances, there shall be no order as to costs.

(NISHITA MHATRE)
JUDGE.

(P.V. HARDAS)
JUDGE.

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